

Application No.: 10/705,399

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Docket No.: 20050/0200487-USO

REMARKS**Pending Claims**

Claims 4-7 and 11-21 have been withdrawn from consideration. Claims 1-3 and 8-10 have been elected for examination. Claim 1 has been amended based on the description in the specification. No new matter has been added. Claim 2 has been rewritten in independent form by incorporating claim 1. No new matter has been added.

Election/Restrictions

Applicants respectfully submit that claim 1 is generic to cited species in the Office Action dated January 26, 2005. The definition of generic claim is stated in MPEP 806.01(d) as follows:

It is not possible to define a generic claim with that precision existing in the case of a geometrical term. In general, a generic claim should include no material element additional to those recited in the species claims, and must comprehend within its confines the organization covered in each of the species.

For the purpose of obtaining claims to more than one species in the same case, the generic claim cannot include limitations not present in each of the added species claims. Otherwise stated, the claims to the species which can be included in a case in addition to a single species must contain all the limitations of the generic claim.

Claim 1 does not include no material element additional to those recited in the species claims, that is, claim 1 does not include limitations not present in each of the added species claims. The definition of generic as applied to claim 1 would dictate that claim 1 read on and be generic to cited species.

It is stated in the Office Action that "...the transitional phrase 'comprising' is used to define the scope of the claim with respect to what unrecited additional components or steps, if any, are excluded from the scope of the claim, not to define or disclose the relationship between independent inventions."

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However, the definition of the term "independent" in given MPEP 802.01 is as follows:

The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect, for example: (1) species under a genus which species are not usable together as disclosed; or (2) process and apparatus incapable of being used in practicing the process.

That is, this term is used to define and separate various species that are disclosed in the specification. It is not a term to define what a generic claim is. Indeed, the species may be independent and distinct but the usage of these terms to generic claims is misplaced.

Applicants continually assert that (1) the claimed elements of claim 1 are reflected in Figs. 1(a) and 1(b); (2) claim 1 further reads on Figs. 4(a) and 4(b) as well as Figs. 5-12 and 20-26 because all the recited elements of claim 1 are shown in these structures. That is, species represented by Figs. 4(a) and 4(b) and Figs. 5-12 and 20-26 are included in claim 1.

As an example, Applicants assert that claim A directed to Structure S comprising elements x and y is clearly generic to dependent claim B directed to Structure S further comprising element z. That is, broadly claimed Structure S with elements x and y would be generic to more narrowly claimed Structure S with elements x, y, and z. And an element such as a "minisheet" disclosed in the present figures would correspond to element z.

Therefore, it is respectfully request that claim 1 be recognized as a generic claim.

Claim Rejections 35 USC §102

Claims 1-3 and 8-10 have been rejected under 35 USC §120(b) as being anticipated by Raidel et al. (WO 98/43684). Applicants respectfully submit that these claims are not anticipated for at least the following reasons.

Claim 1 as amended recites as follows:

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1. (currently amended) An interlabial pad comprising:
an absorbing sheet portion facing a body side where the pad is worn, the absorbing sheet portion including an absorbent body that absorbs body fluid, and
a support sheet backing the absorbing sheet portion;
wherein the interlabial pad is elliptical in shape, the absorbing sheet portion is formed as an aggregate juxtaposing a plurality of strip-type absorbing areas in a belt shape which include independent absorbent bodies, and
wherein the strip-type absorbing areas disposed on a central portion of the absorbing sheet portion form a body fluid discharge port contact area that contacts a vicinity of a body fluid discharge port of the user, the strip-type absorbing areas are coextensive with the length of the interlabial pad, and
wherein the strip-type absorbing areas disposed on both outwardly-folded sides of the absorbing sheet portion form a labia inner wall contact area that contacts an inner wall of the user's labia.

The invention as set forth in claim 1 is not anticipated because at the least (1) the interlabial pad is elliptical in shape, (2) the strip-type absorbing areas are coextensive with the length of the interlabial pad, and (3), the claimed article is an interlabial pad.

With regard to (1), it is noted that Raidel discloses an absorbent article that is not elliptical. Raidel's absorbent article has an hour glass shape. The reason the interlabial pad is elliptical is that it is designed to fit into the labia of a wearer when the pad is folded. Whereas Raidel article is shaped into an hour glass because it is designed to be worn between the legs to cover a larger area than the labia of a wearer. For at least this reason, claim 1 is not anticipated by Raidel.

With regard to (2), the strip-type absorbing areas of claim 1 are coextensive with the length of the interlabial pad. It is clear from the figures of Raidel that the absorbent element 28, which is alleged to correspond to the strip-type absorbing areas, is not coextensive with the length of the absorbent article. Therefore, for at least this reason, claim 1 is not anticipated by Raidel.

With regard to (3), it is respectfully pointed out that the presently claimed invention as set forth in claim 1 is an interlabial pad. In contrast, Raidel's absorbent article is a sanitary napkin. In the field of absorbent articles, it is well known to a person of ordinary skill in the art that these are two different types of absorbent articles. One is designed to fit into the labia of a wearer by folding the article, whereas the other is designed to cover over the labia. Therefore, for at least this reason, the invention as set forth in claim 1 is not anticipated by Raidel.

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Applicants believe that each of the reasons above by itself is sufficient to overcome the anticipated rejection as set forth in the outstanding Office Action.

Claim 2 has been amended to include all of the features of claim 1. Therefore, claim 2 is allowable over the cited reference for at least the same reason as claim 1. Furthermore, original features of claim 2 are also not disclosed by the cited prior art.

In the present invention as set forth in claim 2, "a side end of the labia inner wall contact area comprises an arc-shaped portion." Whereas, in contrast, Raidel's structure shows a flattened protrusion for the alleged contact area. (See Fig. 3 and 4 for the cross section). Therefore, for at least this reason, claim 2 is not anticipated by the cited prior art reference. This distinction is important in that the arc-shaped portion of claim 2 allows firmer grip of the interlabial pad to the labia when the pad is folded and provided in the labia compared to a structure such as a flattened top form as shown in Raidel.

Claims 3 and 8-10 depend from claim 1 directly, and therefore, for at least the same reason as claim 1, these claims are also not anticipated.

It is respectfully requested that all the pending claims be allowed for the foregoing reasons.

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Respectfully submitted,

By 

Chris T. Mizumoto
Registration No.: 42,899
DARBY & DARBY P.C.
P.O. Box 5257
New York, New York 10150-5257
(212) 527-7700
(212) 527-7701 (Fax)
Attorneys/Agents For Applicant

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